

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MICHAEL JOHNSON-KAZANIAN §
v. § CIVIL ACTION NO. 6:09cv374
SHERIFF RAY NUTT, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Michael Johnson-Kazanian, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of the conditions of confinement in the Henderson County Jail. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Johnson-Kazanian complains that he was assaulted on the day of his arrest and taken to the hospital in Athens, where he had blood taken, received a CT scan, and was treated for “severe head and facial trauma,” including three broken teeth. However, he says, at the jail, the medical department refuses to give him anything for his eye or to repair his teeth, that the jail personnel “make a very big deal” out of giving him salt to gargle with, the salt is difficult to obtain, and they refuse to answer his grievances. He asks for injunctive relief, in the form of an order that the jail medical department be required to treat his eye with drops or medication.

On August 17, 2009, Johnson-Kazanian filed a notice of change of address indicating that he is no longer in confinement in the jail. On August 27, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed as moot. Johnson-Kazanian filed objections dated September 9 indicating that he is back in custody; however, he has since then notified the Court that he has again been released.

The Magistrate Judge correctly determined that because Johnson-Kazanian was and is out of custody, the lawsuit is moot. Herman v. Holiday, 238 F.3d 660, 665 (5th Cir. 2001). The fact that he returned to custody briefly, and has now been released again, does not alter this fact, because Johnson-Kazanian does not show that there is a reasonable expectation that he will be subject to the same action again. *See Spencer v. Kenma*, 523 U.S. 1, 17 (1998). Because Johnson-Kazanian is no longer confined in the Henderson County Jail, his lawsuit, which set forth claims only for injunctive relief, is moot, and his objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in the cause, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil rights action be and hereby is DISMISSED without prejudice as moot. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 4th day of November, 2009.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE